

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

NORMAN TADAYOSHI NISHI
1547 18TH Street
Manhattan Beach, CA 90266

Pharmacist License No. RPH 25974

Respondent.

Case No. 4249

OAH No. L-2011080793

DECISION AND ORDER

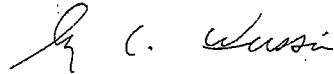
The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on April 12, 2012.

It is so ORDERED on March 13, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 LANGSTON M. EDWARDS
Deputy Attorney General
4 State Bar No. 237926
300 So. Spring Street, Suite 1702
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Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4249

11 **NORMAN TADAYOSHI NISHI**
12 **1547 18th St.**
Manhattan Beach, CA 90266
13 **Pharmacist License No. RPH 25974**

OAH No. L-2011080793

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

14 Respondent.

15
16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
17 entitled proceedings that the following matters are true:
18

19 **PARTIES**

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
21 She brought this action solely in her official capacity and is represented in this matter by Kamala
22 D. Harris, Attorney General of the State of California, by Langston M. Edwards, Deputy Attorney
23 General.
24

25 2. Norman Tadayoshi Nishi (Respondent) is represented in this proceeding by attorney
26 Ronald S. Marks, Esq., whose address is 21900 Burbank Boulevard, Suite 300
27 Woodland Hills, CA 91367.
28

3. On or about February 27, 1969, the Board of Pharmacy issued Pharmacist License No. RPH 25974 to Norman Tadayoshi Nishi (Respondent). The Pharmacist License expired on February 28, 2011, and has not been renewed.

JURISDICTION

4. Accusation No. 4249 was filed before the Board of Pharmacy (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 2, 2012.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 4249. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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ORDER

IT IS HEREBY ORDERED that Citation No. CI 2009 41227 issued to Respondent Norman Tadayoshi Nishi as well as the abatements and fines ordered by those citations, are withdrawn and dismissed and that Pharmacist License No. RPH 25974, issued to Respondent Norman Tadayoshi Nishi, is surrendered and accepted by the Board of Pharmacy.

1. The surrender of Respondent's Pharmacist License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Pharmacy.

2. Respondent shall lose all rights and privileges as a Pharmacist in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 4249 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

5. Respondent shall pay the agency a civil penalty in the amount of \$75,000.00 prior to issuance of a new or reinstated license.

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ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Ronald S. Marks, Esq. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 2/2/12

Norman Tadayoshi Nishi
NORMAN TADAYOSHI NISHI
Respondent

I have read and fully discussed with Respondent Norman Tadayoshi Nishi the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 2/5/12

Ronald S. Marks
RONALD S. MARKS, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General

Langston M. Edwards
LANGSTON M. EDWARDS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4249

]»

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 LANGSTON M. EDWARDS
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10 In the Matter of the Accusation Against:

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12 **1547 18th St.**
Manhattan Beach, CA 90266
13 **Pharmacist License No. RPH 25974**

OAH No. L-2011080793

ACCUSATION

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

20 2. On or about February 27, 1969, the Board of Pharmacy issued Pharmacist License
21 Number RPH 25974 to Norman Tadayoshi Nishi (Respondent). The Pharmacist License expired
22 on February 28, 2011, and has not been renewed.

23
24 **JURISDICTION**

25 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
26 Consumer Affairs, under the authority of the following laws. All section references are to the
27 Business and Professions Code unless otherwise indicated.
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2 4. Section 118, subdivision (b), of the Code provides, in pertinent part that the
3 suspension, expiration, surrender or cancellation of a license shall not deprive the Board of
4 jurisdiction to proceed with a disciplinary action during the period within which the license may
5 be renewed, restored, reissued or reinstated.

6 5. Section 4300 of the Code states:

7 “(a) Every license issued may be suspended or revoked.

8 (b) The board shall discipline the holder of any license issued by the board, whose
9 default has been entered or whose case has been heard by the board and found guilty, by any of
10 the following methods:

11 ...

12 (4) Revoking his or her license.

13 (5) Taking any other action in relation to disciplining him or her as the board in its
14 discretion may deem proper.”

15 6. Section 4161 of Code states, in pertinent part:

16 “(a) A person located outside this state that (1) ships, sells, mails, or delivers dangerous
17 drugs ... into this state or (2) sells, brokers, or distributes dangerous drugs ... within this state
18 shall be considered a nonresident wholesaler.

19 (b) A nonresident wholesaler shall be licensed by the Board prior to shipping, selling,
20 mailing, or delivering dangerous drugs ... to a site located in this state or selling, brokering, or
21 distributing dangerous drugs ... within this state.”

22 7. Section 4169 of the Code states, in pertinent part:

23 “(a)(1) A person or entity may not purchase, trade, sell, or transfer dangerous drugs or
24 dangerous devices at wholesale with a person or entity that is not licensed with the board as a
25 wholesaler or pharmacy.”

26 8. Section 4301 of the Code states:

27 “The board shall take action against any holder of a license who is guilty of unprofessional
28 conduct ... Unprofessional conduct shall include, but is not limited to, any of the following:

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“(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or terms of this chapter or the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal agency.”

(p) Actions or conduct that would have warranted denial of a license.”

9. Section 480 of the Code states:

“(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

...

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.”

10. Section 4105 of the Code states, in pertinent part:

“(a) All records or other documentation of the acquisition and disposition of dangerous drugs ... by any entity licensed by the Board shall be retained on the licensed premises in a readily retrievable form.

(b) The licensee may remove the original records or documentation from the licensed premises on a temporary basis for license-related purposes. However a duplicate set of those records or other documentation shall be retained on the licensed premises.

(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.”

11. Section 4081 of the Code states:

“(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three (3) years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy ... or establishment

1 holding a currently valid and unrevoked certificate, license, permit, registration, or exemption
2 under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4
3 (commencing with Section 16000) of Division 9 of the Welfare and Instructions Code who
4 maintains a stock of dangerous drugs or dangerous devices.”

5 12. Section 4332 of Code states, in pertinent part, that any person who fails, neglects, or
6 refuses to maintain the records required by Section 4081 or who when called upon by an
7 authorized officer or a member of the board; fails, neglects, or refuses to produce or provide the
8 records within a reasonable time, or who willfully produces or furnishes records that are false is
9 guilty of a misdemeanor.”

10 13. California Code of Regulations, title 16, section 1714, states, in pertinent part:

11 “(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and
12 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.
13 The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice
14 of pharmacy.”

15 14. California Code of Regulations, title 16, section 1770, states:

16 “For the purpose of denial, suspension, or revocation of a personal or facility license
17 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
18 crime or act shall be considered substantially related to the qualifications, functions or duties of a
19 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
20 licensee or registrant to perform the functions authorized by his license or registration in a manner
21 consistent with the public health, safety, or welfare.”

22 23 **BACKGROUND FACTS**

24 15. On or around January 30, 1991, the Board issued Original Permit Number PHY
25 36852 to Norman Tadayoshi Nishi (Respondent) to do business as Morningside Medical
26 Pharmacy (Pharmacy) located at 1704 W. Manchester Ave., Los Angeles, CA 90047, the address
27 of record.
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1 16. Respondent was the Sole Owner and Pharmacist-In-Charge from January 30, 1991 to
2 November 20, 2008.

3 17. On or around May 13, 2009, during an investigation of the Pharmacy, evidence was
4 adduced that Respondent had removed all invoice records from the Pharmacy and stored them at
5 his home without a waiver issued by the Board.

6 18. Respondent returned the invoice records dating from June 18, 2007 to November 1,
7 2008 to the Pharmacy for the Board's review.

8 19. The Board's review of the invoice records resulted in the discovery of 217 invoices
9 from unlicensed wholesalers of pharmaceuticals, namely, Drogueria De La Villa, Inc. SUC/FMC
10 Distributors of Nevada, Inc., located in Arecibo, Puerto Rico and Drogueria De La Villa, Inc.,
11 located in Arecibo, Puerto Rico in violation of Bus. and Prof. Code § 4161.

12
13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Purchasing Dangerous Drugs From Unlicensed Entity)**

15 20. Respondent is subject to disciplinary action under section 4169, subdivision (a)(1) in
16 conjunction with section 4161 subdivisions (a)-(b) and California Code of Regulations, title 16,
17 section 1770 in that Respondent purchased dangerous drugs from an unlicensed wholesaler or
18 pharmacy. Complainant incorporates by reference paragraphs 15 – 19, above, as if fully set forth
19 herein.

20
21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Failure to Produce Records)**

23 21. Respondent is subject to disciplinary action under section 4081, subdivision (a) and
24 section 4105, subdivisions (a) – (c) in that Respondent failed to maintain all records of acquisition
25 or disposition of dangerous drugs at the Pharmacy. Moreover, Respondent failed to obtain a
26 waiver for off-site records storage pursuant to the requirements set forth in California Code of
27 Regulations, title 16, section 1707. Complainant incorporates by reference paragraphs 15 -19,
28 above, as if fully set forth herein.

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2 **THIRD CAUSE FOR DISCIPLINE**

3 **(Unprofessional Conduct: Violation of State Statutes)**

4 22. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
5 (o) for violation of state statutes and provisions of Chapter 9 of the Code. Complainant
6 incorporates by reference paragraphs 15 - 21 above, as if fully set forth herein.

7
8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct: Actions Warranting Denial of License)**

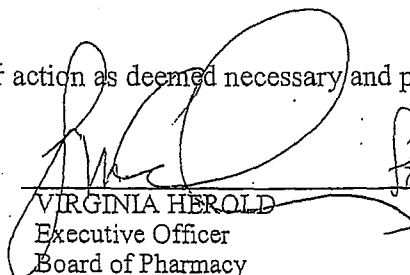
10 23. Respondent is subject to disciplinary action under sections 480, subdivision (a) and
11 4301, subdivision (p) of the Code for committing acts that would have warranted denial of a
12 license. Complainant incorporates by reference paragraphs 15 -22 above, as if fully set forth
13 herein.

14
15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Board of Pharmacy issue a decision:

- 18 1. Revoking or suspending Pharmacist License Number RPH 25974, issued to Norman
19 Tadayoshi Nishi;
- 20 2. Ordering Norman Tadayoshi Nishi to pay the Board of Pharmacy the reasonable costs
21 of the investigation and enforcement of this case, pursuant to Business and Professions Code
22 section 125.3;
- 23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: 2/2/12

25 
26 VIRGINIA HEROLD
27 Executive Officer
28 Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant